

COMPLIANCE BOARD OPINION NO. 03-2
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January 22, 2003

Ms. Jane Ball Shipley

The Open Meetings Compliance Board has considered your complaint that the Boards of Directors and Trustees of the Enoch Pratt Free Library violated the Open Meetings Act by holding an unlawfully closed session on October 16, 2002. For the reasons stated below, and based on the information provided to it, the Compliance Board finds that the Act was not violated.

I

Complaint and Response

On October 16, 2002, the Board of Trustees and Board of Directors each held their annual meetings, which were scheduled to begin with the meeting of the Board of Trustees at 8:00 a.m. in the Poe Room at Pratt Central. According to the complaint, at 7:55 a.m. no trustees or directors were in the Poe Room. Within the next few minutes, members of the two boards “walked through the doors leading from a private area of the library that contains the Board Room and went into the Poe Room,” after which the open meeting of the Board of Trustees began.

The complaint inferred that the trustees and directors had been meeting in private in the Board Room. The basis for this inference was stated as follows: “During [the open] meeting, [the] Board of Trustees approved a multi-paged by-laws change immediately after Virginia Adams made the motion for approval. Ms. Adams called the attention of her fellow trustees to a document ‘in your packet’ of material on the table, but the Board members did not read (nor did they have time to) or review or discuss this document before voting. I believe they had discussed this piece of important Pratt business, and perhaps other things as well, in private prior to the public meeting.”

In a timely response on behalf of the Library, Marta D. Harting, Esquire, denied that either board had violated the Act. The response indicated that, at each annual meeting, the Library’s staff makes breakfast available to board members who arrive early enough and want to get something to eat. On October 16, 2002, these breakfast items were made available in the Board Room, a conference room around the corner from the Poe Room, the site of the open meeting. The response continued: “Several members of the Boards gathered in the Board Room to have

breakfast and engage in one-on-one or small group (3-4 individuals) discussions amongst themselves. No attendance was taken. Even if a quorum of either Board was present in the Board Room, no meeting of either Board was convened nor was any public business (including any amendment to the By-laws) transacted or discussed by a quorum of either Board.”

With regard to the lack of discussion at the open meeting, the response explained that the amendment to the by-laws was “self-explanatory,” consisting of an increase in the required number of meetings of the Board of Trustees and elimination of a provision regarding automatic removal of a trustee for failure to attend three consecutive meetings. Members of the Board of Trustees “apparently did not feel any need to discuss or ask questions about the amendment before voting on it.” Because the Board of Directors has no authority with respect to amendment of the by-laws, it did not discuss or vote on the amendment during its subsequent meeting.

II

Analysis

The Open Meetings Act applies when a quorum of a public body convenes for the consideration or transaction of an item of public business within the scope of the Act. *See* §10-502(g) of the State Government Article (definition of the term “meet”). The Act does not apply to “a chance encounter, *social gathering*, or other occasion that is not intended to circumvent this subtitle.” §10-503(a)(2).

Social conversation around a breakfast buffet, even if a quorum of a public body participates, is a “social gathering” outside the Act, as long as the quorum refrains from discussion of public business. *See, e.g.* Compliance Board Opinion 02-11 (July 12, 2002). The Library flatly asserts that this was true at breakfast on October 16: The conversation was social, and neither the proposed by-laws amendment nor any other item of public business was discussed. Based on this representation, we conclude that the Act did not apply to the breakfast gathering and, hence, neither the private nature of the gathering nor any other aspect of it violated the Act.

The complaint inferred from the lack of discussion at the open meeting that the by-laws amendment must have been discussed privately beforehand. Under some circumstances, an inference of this kind would be robust. If, for example, immediately following a private gathering of a quorum, some complex or controversial item of business were to sail through at an open meeting without discussion, the public body will have created the strong impression of having unlawfully settled the matter in private, because no decision of this nature could

plausibly be made without discussion. By contrast, it is quite common, and unsurprising, for a public body to deal with straightforward, easily grasped procedural matters without discussion. The by-laws amendment approved by the Board of Trustees on October 16 was of this nature. Consequently, the Compliance Board has no basis on which to doubt the unequivocal representation by the Library that the breakfast gathering was social, not involving the consideration of public business.

III

Conclusion

In summary, the Open Meetings Compliance Board finds that the Boards of Trustees and Directors of the Enoch Pratt Free Library did not violate the Open Meetings Act in connection with a breakfast gathering in the Board Room of the Library on October 16, 2002.

OPEN MEETINGS COMPLIANCE BOARD*

Courtney McKeldin

Tyler G. Webb

*Chairman Walter Sondheim, Jr., did not participate in the preparation or approval of this opinion.